

JAN 28 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTHA ITUARTE-OLIVAS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-74066

Agency No. A79-805-448

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 14, 2008<sup>\*\*</sup>

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Martha Ituarte-Olivas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing as untimely her appeal from an immigration judge's ("IJ") order denying her request for

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

adjustment of status. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition for review.

The record reflects that the IJ's oral decision was rendered on May 27, 2004, the notice of appeal was due on June 28, 2004, *see* 8 C.F.R. § 1003.38(b), and the BIA received Ituarte-Olivas' notice of appeal on July 1, 2004. Because Ituarte-Olivas has not pointed to the type of "rare circumstances" under which the BIA may excuse late filing, *see Oh v. Gonzales*, 406 F.3d 611, 613 (9th Cir. 2005), the BIA properly dismissed the appeal as untimely.

**PETITION FOR REVIEW DENIED.**